

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

BNSF RAILWAY COMPANY,

Plaintiff,

v.

Case No.: 3:13-cv-00912

District Judge Kevin H. Sharp

TENNESSEE DEPARTMENT OF REVENUE
and RICHARD ROBERTS, Commissioner of
Revenue of the State of Tennessee,

Defendants.

PRELIMINARY INJUNCTION

Consistent with the consent of the parties for entry of a Preliminary Injunction in the form below, and without prejudice to the claims or defenses of any of the parties to this action, it is hereby ORDERED that the Defendants TENNESSEE DEPARTMENT OF REVENUE, and RICHARD ROBERTS, in his official capacity as Commissioner of the Tennessee Department of Revenue, their agents, managers, supervisors, employees, and those in active concert and/or participation with them who receive actual notice of this Order by publication or otherwise, be and the same are hereby

PRELIMINARILY ENJOINED AND RESTRAINED

from assessing, levying, and/or collecting sales and use taxes on the purchases and use of diesel fuel by plaintiff BNSF Railway Company ("BNSF"), pending entry of a final unappealable judgment in this case. Within sixty days after entry of a final unappealable judgment in Illinois Central Railroad Company v. Tennessee Department of Revenue and Reagan Farr, Commissioner of Revenue of the State of Tennessee, Civil No 3:10-0197, which presently is on appeal to the Sixth Circuit Court of Appeals, No. 13-6348, the parties shall file with this Court a status report indicating what further proceedings are necessary to resolve this case.

As a condition of this Preliminary Injunction, the Plaintiff shall file monthly reports with Defendant Tennessee Department of Revenue reflecting the dollar amount of diesel fuel purchased or used by Plaintiff in Tennessee, pending final resolution of this action. As a further condition of this Preliminary Injunction, if no final unappealable judgment has been entered in this case within thirty months after entry of this Preliminary Injunction, Plaintiff and the Commissioner, consistent with Tenn. Code Ann. § 67-1-1501(b)(5), shall enter an extension of the statute of limitations applicable to the assessment, levy, and collection of sales and use taxes on BNSF's purchase and use of diesel fuel after October 16, 2013, as set forth in Tenn. Code Ann. § 67-1-1501(b), to the date that is one year after entry of a final unappealable judgment in this case.

A copy of this Preliminary Injunction shall be served by plaintiff to all affected individuals and entities.

The preliminary injunction hearing scheduled for October 30, 2013 at 10:00 a.m. is hereby cancelled.


UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:

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